

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3359

November 13, 2003

R E S O L U T I O N

Resolution G-3359. Pacific Gas and Electric Company (PG&E) requests approval of a refund plan for gas trenching costs to certain applicants for line extensions. PG&E's request is approved.

By Advice Letter (AL) 2111-G filed on October 26, 1998.

SUMMARY

This resolution approves PG&E's plan to make refunds for gas trenching costs to certain applicants¹ for line extensions.

On September 17, 1998, the Commission issued Decision (D.) 98-09-058 (in Complaint (C.) 96-05-049, Florsheim Brothers vs. Pacific Gas and Electric). In that decision, the Commission ordered PG&E to refund gas trenching costs to the Florsheim Brothers and encouraged PG&E to make refunds for gas trenching costs to other "similarly situated" applicants for line extensions. To comply with D. 98-09-058, and a request by the Energy Division, PG&E filed AL 2111-G on October 26, 1998.

Since AL 2111-G was filed, PG&E has implemented its proposed gas refund plan and has refunded and adjusted \$10,899,918 back to applicants. If applicants believe that their gas refund was not properly adjusted or refunded, then they may address their concerns to PG&E for PG&E to process under the Bankruptcy Court's order of March 25, 2002. Applicants who do not have a main line extension (MLX) account and believe they should have received a refund also

¹ The developer or party entering into a contract or agreement with the company for the installation of gas and /or electric facilities or the underground conversion of the existing overhead electric facilities.

may address their concerns to PG&E with a copy of their contract for the period July 1, 1995 through September 17, 1998, for PG&E to process under the Bankruptcy Court's order of March 25, 2002.

Utility Design, Inc. (UDI) filed a protest to AL 2111-G, stating that an AL filing is not the appropriate way to develop a refund plan and that PG&E's computer records are not sufficient to locate all impacted applicants. This aspect of UDI's protest is denied. In addition, UDI believed the Commission should consider: 1) specified charges for gas meters and regulators, 2) interest, and 3) cost-of-ownership in the refund plan. PG&E agreed to address those issues accordingly.

Florsheim Brothers filed a response to AL 2111-G, stating that PG&E failed to demonstrate how the refund would be calculated. They tentatively agreed to review the calculation with PG&E. PG&E acknowledged that they would review the calculation with the Florsheim Brothers.

BACKGROUND

Gas and electric utilities each develop their own separate extension rules that are unique to their operations. Gas line extensions have always been installed underground, while electric facilities were typically installed overhead in the past. As technology advanced, utilities were able to install electric facilities underground in the same trench (a "joint trench") as the gas facilities. This approach reduces costs.² The rules for gas and electric utilities differ in their methods for balancing costs between the applicant and the utility. For example, PG&E's Electric Rule 15 requires the applicant to be responsible for the costs associated with the electric portion of a joint trench while Gas Rule 15 requires the utility to be responsible for the gas portion costs. To determine the gas cost for the joint trench, the "occupants" of the joint trench would divide the cost amongst themselves based on PG&E Standard Practice 410.18-1. PG&E Standard Practice 410.18-1 defines the procedures for planning, estimating, scheduling, billing, coordinating, constructing and accounting for the installation of gas, electric, telephone and other compatible facilities in a joint trench.

² A joint trench may contain the underground lines and equipment that provides gas, electricity, telephone, and cable television service.

Applicants pay PG&E in advance for the costs of installation of the line extensions, including an amount for contributions-in-aid-of-construction (CIAC) taxes. Developers or possibly PG&E would then dig the trench and install the gas, electric, telephone, and cable lines and equipment. When the project is completed and the gas meter is running, the utility provides a refund to the developers for the gas portion of the joint trench.

Effective July 5, 1995, the Commission authorized PG&E to implement major revisions to their line extension rules.³ As one part of the design change, the width of the electric trench choices of 12", 18", or 24" were changed to a standardized width of 24". This width change allowed PG&E to standardize its trench design. Although the changes represented extensive revisions to Gas Rule No. 15, the changes did not affect the allocation of trenching cost responsibilities between the utility and applicants for service.

After July 1, 1995, without Commission approval, PG&E no longer provided refunds to developers for the cost of the gas portion of the joint trench. PG&E believed that its new standard joint trench design was large enough to allow the inclusion of gas facilities in a joint trench at no additional cost. PG&E asserted that the gas facilities could go into the already dug standard electric trench without the developer spending additional funds to include gas facility lines. PG&E contended that a developer was not entitled to a refund unless installation of the gas facilities added costs to the already dug standard electric trench.

Florsheim Brothers, a developer, filed a complaint against PG&E and alleged that PG&E decided on its own to change the rules and to deny any cost reimbursement to developers (line extension applicants) who provided the entire joint trench. PG&E's Gas Rule 15 states that gas trenching costs are the utility's responsibility. Florsheim Brothers believed that PG&E could not change its responsibilities pursuant to Gas Rule 15 without the Commission's approval.

³ Re Line Extension Rules of Electric and Gas Utilities, (D.94-12-026) 58 CPUC2d 1 (1994).

On September 17, 1998, the Commission issued Decision (D.) 98-09-058, concluding that PG&E should continue to provide refunds for the gas portion of joint trenches as it did prior to July 1, 1995. The Commission found that pursuant to PG&E's Gas and Electric Rule 15, in effect before and after July 1, 1995, the developer was responsible for the cost of the electric portion of a joint trench, and the utility was responsible for the gas portion. After July 1, 1995, PG&E implemented a new policy whereby refunds would only be provided in situations where its standard trench design had to be enlarged to accommodate gas facilities, or for "gas only" trenches. The new policy, in effect, reallocated cost responsibility to the developers. The Commission found that PG&E's new policy, in effect, changed Gas Rule 15 without Commission approval. The Commission ordered PG&E to provide a refund to Florsheim Brothers, and encouraged PG&E to make refunds for gas trenching costs to other similarly situated applicants for line extensions.

On October 26, 1998, PG&E submitted, with AL 2111-G, its proposed gas refund plan for gas trenching costs to applicants for line extensions "similarly situated" to the Florsheim Brothers.

In the refund plan, PG&E proposed to slightly deviate from one component of its Gas Rule 15 requirements. As part of the payments it receives from applicants, Gas Rule 15 requires PG&E to collect a CIAC tax. Under PG&E's interpretation at the time, PG&E collected CIAC tax at a 34% rate on the gas portion of the joint trench. Pursuant to the Commission's interpretation of Rule 15, in D. 98-09-058, PG&E would have collected 35% otherwise on the gas portion of the joint trench.

Under its refund plan, to correct the 1% discrepancy, PG&E would need to collect an additional 1% from the developers, which would then be subject to a refund to the developers. Instead of collecting the additional 1% and returning it to the developers, PG&E proposed to simply refund the 34% CIAC tax collected for the joint trench. Under this plan, developers were left indifferent.

PG&E's schedule plan for its refund is summarized as:

October 31, 1998	Letters will be sent to all potentially eligible applicants.
November 1, 1998 through December 31, 1998	Division offices will review all identified jobs.
November 8, 1998 through March 1, 1999	Adjustments will be made to the MLX accounts and refund checks will be issued as appropriate.
March 31, 1998 through April 15, 1999	Project Manager will finalize the database and submit final report to Commission.

NOTICE

Notice of AL 2111-G was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order (G.O.) 96-A.

PROTESTS

UDI

On November 9, 1998, UDI filed a protest to PG&E AL 2111-G. PG&E filed a response to UDI's protest on November 24, 1998. UDI then filed comments on PG&E's response on November 30, 1998. PG&E filed a response to UDI's comments on December 23, 1998. Below is a list of UDI's concerns as stated in their protest and comments, with PG&E's response to UDI's protest and comments.

In UDI's protest, UDI believes an AL filing is not an appropriate way to develop a refund plan. UDI argues that the D.98-09-058 did not order PG&E to develop a refund plan, and that the Energy Division did not request PG&E to make a refund for gas trenching costs. UDI believes that if the Commission intended to supervise PG&E's refund plan, then the Commission should open an investigation as it did in Order Instituting Investigation (I.) 96-10-033⁴.

⁴ Investigation on the Commission's own motion and Order to Show Cause to determine if PG&E should be held in violation of Gas Tariff Rule 16 for failure to

Furthermore, UDI asserts that PG&E's refund plan lacks provision for oversight or audit by independent individuals.

In PG&E's response, PG&E believes that an advice letter process under the authority of G.O. 96-A with a resolution is the best approach for the refund plan. Also, PG&E states that one of reasons for the advice filing was to deviate from the Gas Rule 15 requirement. Instead of collecting an additional 1% CIAC tax from developers, which is then subject to refund to the developers, PG&E proposes not to collect the 1% discrepancy.

UDI recommends that if the CPUC intends to supervise PG&E's action, then the Commission needs to consider the following issues listed below:

1) PG&E adequate notice to line extension applicants

In UDI's protest, UDI recommends that PG&E should assure adequate notice to all line extension applicants who have done business with PG&E since 1990. UDI believes that PG&E's review of its computer records is not sufficient to locate all affected applicants because some projects do not have contracts or some contracts were lost.

PG&E responded to UDI's protest, stating that "whether a contract was prepared or not is not the issue". PG&E states that all applicants should have a MLX account established to track refunds. The MLX account requires a contract to be prepared in order for MLX refunds to be distributed. However, if customers are aware of any instances where contracts were not obtained or misplaced, PG&E says it would be happy to review those as well.

In UDI's comment, UDI claims that the PG&E MLX account is inadequate because for those projects where PG&E used allowances as credits and the

provide trenching at no cost within the allowance of 100 feet. D.97-10-030 adopted Stipulation for Settlement, which requires PG&E to make refunds to customers for the first 100 feet of trenching for a gas-only trench or an expanded trench in an electric service trench. UDI's petition to expand the scope of the proceeding to include Gas Tariff Rule 15 was denied.

credits were sufficient to offset the entire cost of the gas system, no MLX account would have been created.

In PG&E's response to UDI's comment, PG&E says UDI is mistaken. All gas contracts are set up in the MLX account, even if the allowance offsets the entire refundable costs. This arrangement is required under Gas Rule 15.

2) Correct contract forms must be used

In UDI's protest, UDI recommends that PG&E's contract form should include specified charges for gas meters and regulators.

In PG&E's response, PG&E agrees and will assure that projects that were built under the provisions of the July 1, 1995 Rules (that relate to charges for gas meters and regulators) will be evaluated under those provisions. If the jobs were done under the provisions of the July 1, 1998 Rules, then the new Rules will be used.

3) Interest must be included in the refunds

In UDI's protest, UDI states that the gas refund also should include interest since PG&E has withheld the gas trenching refund and the related CIAC taxes from the applicants for the past three or more years.

In PG&E's response, PG&E indicates that it would calculate and include interest for the refund.

4) Cost of Service Penalties

In UDI's protest, UDI states that PG&E should consider the Cost-of-Service penalties in the refunds.

In PG&E's response, PG&E states that if UDI is referring to cost-of-ownership, then that statement is true. After 36 months, cost-of-ownership is deducted from the unrefunded MLX balance.

Florsheim Brothers

On November 16, 1998, the Florsheim Brothers filed a response to PG&E AL 2111-G. The Florsheim Brothers state that PG&E fails to demonstrate how the refund amount would be calculated, and have tentatively agreed to review the

calculation with PG&E. The Florsheim Brothers also mention that the proposed refund plan should include interest, and the beginning date on which interest would accrue. Additionally, to verify the refund calculation of an individual refund, the Florsheim Brothers suggest that PG&E be required to include the following documents with the individual refund check or credit:

- original Form B⁵,
- revised Form B,
- original cost summary,
- the revised cost summary, and
- the composite joint trench drawing.

In PG&E's response to Florsheim Brothers comments on December 3, 1999, PG&E confirms that they will review the calculations with the Florsheim Brothers. PG&E will not include interest in the "amount subject to refund" but will calculate the interest on any amount due the developer under PG&E's normal MLX account procedures. PG&E believes it would be unnecessarily burdensome and complicated to supply all of the documents identified in Florsheim's protest. Instead, PG&E will supply information in a form letter. The form letter would include:

- revised value of distribution main trench,
- existing value of distribution main (from original contract),
- incremental cost now subject to refund as describe in Rule 15,
- incremental Income Tax Component Contribution tax subject to refund,
- total incremental MLX adjustment subject to refund,
- interest based upon Rule 15, and
- total amount of refund.

DISCUSSION

In D. 98-09-058 (Florsheim Brothers vs. Pacific Gas and Electric), the Commission concludes that PG&E should continue to provide refunds for the gas portion of joint trenches as it did prior to July 1, 1995. The Commission finds that PG&E changed its policy without Commission approval. The Commission encourages PG&E to make refunds for gas trenching costs to other similar situated

⁵ Authorize job estimation for joint trench construction.

applicants for line extensions. To comply with the Commission recommendation, PG&E filed AL 2111-G to make refunds for applicants of gas trenching costs for the period July 1, 1995 through September 17, 1998.

In AL 2111-G, PG&E requested to deviate from a Gas Rule 15 requirement. Gas Rule 15 requires PG&E to collect a CIAC tax on gas extensions and on the gas portion of a joint trench. At the time the AL was filed, the CIAC tax rates were 35% for gas extensions and 34% on the gas portion of a joint trench. Pursuant to the Commission's interpretation of Gas Rule 15, in D. 98-09-058, PG&E would have collected 35% otherwise. To correct the 1% discrepancy, PG&E would need to collect an additional 1% from the developers, which would then be subject to refund to the developers. Instead of collecting the additional 1% and returning it to the developers, PG&E proposed to simply refund the 34% CIAC tax collected for the joint trench. Under this plan, developers are left indifferent.

Under this gas refund plan, the Commission finds that PG&E's proposal to refund the 34% CIAC tax collected for the joint trench, and not collect the 1% difference, to be reasonable.

In UDI's protest, UDI believes an AL filing is not an appropriate way to develop a refund plan and suggests that the Commission should open an investigation. UDI has not provided any information on what to investigate, or adequately explained why an advice letter is inappropriate. D.98-09-058 already recommended that PG&E make the refunds to other applicants similarly situated to the Florsheim Brothers. There is no need for further investigation. UDI's protest that an AL filing is not an appropriate way to develop a refund plan is denied.

UDI protests that PG&E's review of its computer records is not sufficient to locate all affected applicants because some projects do not have contracts or some contracts were lost. PG&E responds by stating that all applicants have a MLX account, which was established when the contract was prepared. UDI comments that PG&E's MLX account is inadequate because no MLX account would have been created for the projects where PG&E used allowances as credits and the credits were sufficient to offset the entire cost of the gas system. In PG&E's response to UDI's comment, PG&E says all gas and electric contracts are set up in the MLX account, even if the allowance offsets the entire refundable costs. This arrangement is required under Gas Rule 15.

Gas Rule 15 states that each applicant “requesting a Distribution Main Extension [including PG&E’s estimated value of the distribution trenching], may be required to execute a written contract”. When a written contract is prepared, PG&E would create an MLX account for their applicants. Therefore, we believe each of PG&E’s applicants should have a MLX account. Further, we believe PG&E’s MLX account is adequate because all projects required a contract, which is then set in an MLX account. Applicants who do not have an MLX account and believe they should receive a refund may address the issue to PG&E with a copy of their contract for the period July 1, 1995 through September 17, 1998, for PG&E to process under the Bankruptcy Court’s order of March 25, 2002.

In the gas refund plan, UDI believes that the Commission also should consider: 1) specified charges for gas meters and regulators, 2) interest, and 3) cost-of-ownership. PG&E agrees to address these issues accordingly.

In the Florsheim Brothers’ response to the AL, the Florsheim Brothers state that PG&E fails to demonstrate how the refund would be calculated, and have tentatively agreed to review the calculation with PG&E. In addition, the Florsheim Brothers recommend that PG&E make all relevant documents available to the applicants in the event there is a dispute concerning any particular project or refund. PG&E confirms that they will review the calculation with the Florsheim Brothers. PG&E will supply information to applicants in a form letter.

Since the AL was filed in 1998, PG&E has implemented the refund plan. PG&E sent a letter to the Energy Division on April 1, 1999, which finalized the refund and adjustment of \$10,899,918. According to the information received from PG&E by the Energy Division, PG&E has already refunded and adjusted the \$10,899,918 back to its applicants. PG&E has provided the Energy Division with an Excel spreadsheet indicating that they have reviewed the account of more than three thousand applicants. The Energy Division randomly selected a number of applicant accounts to review. From the selected applicant accounts, the Energy Division found the refund or adjustment to be reasonable. If applicants believe their gas refund was not properly adjusted or refunded, then they may address their concerns to PG&E for PG&E to process under the Bankruptcy Court’s order of March 25, 2002.

Overall, the Commission finds the Gas Refund Plan to be reasonable.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the draft resolution was mailed to parties for comments on October 9, 2003. UDI filed comments on October 28, 2003. PG&E filed comments on November 3, 2003 and reply comments on November 7, 2003.

In UDI's comments, UDI requests that the resolution be revised to:

- set the interest rate at 10% per annum for the refunds of the gas trenching costs and the CIAC taxes to be in harmony with the Bankruptcy Court's March 25, 2002 Order;
- require PG&E to provide an accounting of the Florsheim refunds made from September 17, 1998 to date;
- extend the coverage period to include any projects or MLX agreement from July 1, 1995 to present where gas trenching costs and CIAC taxes were not refunded per PG&E's Tariff Gas Rule 15; and
- keep the refund program proposed in AL 2111-G open to complete refunds to all affected applicants.

In PG&E's comments, PG&E generally supports the draft resolution, but cautions that because it is in a Chapter 11 bankruptcy proceeding, PG&E needs to follow the Bankruptcy Court Order dated March 25, 2002. The Bankruptcy Court Order:

- granted PG&E' motion to assume all pre-petition line extension contracts and to pay all amounts validly owed under them;
- provided for the payment of interest on outstanding amounts due under such line extension contracts at the rate of ten percent per annum from and after April 6, 2001; and
- provided that all disputes with respect to such payments must be heard and determined by the Bankruptcy Court, and established a detailed process under its jurisdiction to resolve any dispute regarding the amounts owed under such contracts.

To comport with the Bankruptcy Court's March 25, 2002 Order, PG&E recommends that the draft resolution be slightly modified. PG&E suggested that certain findings be amended so that applicants, with concerns about PG&E's payment should address their concerns to PG&E for PG&E to process under the Bankruptcy Court Order of March 25, 2002.

In PG&E's reply comments, PG&E believes UDI's proposed revisions are unnecessary, will create confusion among applicants, and will conflict with order of the Bankruptcy Court. PG&E believes the Bankruptcy Court Order accomplishes the purposes of the draft resolution, and again recommends that the resolution should be modified to allow PG&E to process applicants' concern under the Bankruptcy Court's Order.

The Commission believes UDI's suggestions to revise the resolution to set the interest rate at 10% per annum, require an accounting of the Florsheim refunds to the Commission, provide an extended coverage period, and keeping the refund program (proposed in AL 2111-G) open, are not necessary. The Bankruptcy Court has established a specific set of procedures relating to prepetition claims for payments arising under the line extension contracts. To be in compliance with the Bankruptcy Court Order, the Commission agrees with PG&E that if concerns are raised, PG&E should process them under the Bankruptcy Court Order. This approach will avoid confusion among the applicants and it will avoid conflicts with Bankruptcy Court Order dated March 25, 2002.

The draft resolution has been revised to reflect PG&E's comments.

FINDINGS

1. PG&E's Gas Rule 15 requires the utility to be held responsible for the trenching cost associated with the gas portion of a joint trench.
2. Prior to July 1, 1995, PG&E provided refunds to applicants for the cost of the gas portion of the joint trenches.
3. After July 1, 1995, PG&E changed its policy and did not provide refunds to applicants for the cost of the gas portion of the joint trenches.
4. D. 98-09-058 found that PG&E violated its Gas Rule 15.
5. D. 98-09-058 encourage PG&E to make refunds for gas trenching costs to applicants for line extensions, who were similarly situated to the Florsheim Brothers.

6. On October 26, 1998, PG&E submitted a gas refund plan with AL 2111-G for gas trenching costs to applicants for line extensions “similarly situated” to the Florsheim Brothers.
7. PG&E’s requested a deviation from Gas Rule 15 that would allow PG&E to refund the 34% CIAC tax collected for the gas portion of a joint trench and not collect an additional 1% CIAC tax. Under this plan, the applicants are left indifferent.
8. It is reasonable to grant PG&E’s proposed deviation from its Gas Rule 15 under the refund plan.
9. The aspects of UDI’s protest, stating that an AL filing is not an appropriate way to develop a refund plan and PG&E’s computer records are not sufficient to locate all affected applicants, should be denied.
10. There is no need for further investigation on the gas trench refund plan because it was adequately addressed in D.98-09-058 and in AL 2111-G.
11. PG&E agrees to address UDI’s comment on: 1) the specified charges for gas meters and regulators, 2) interest, and 3) cost-of-ownership in the refund plan.
12. Florsheim Brother filed a response to AL 2111-G, stating that PG&E fails to show how the refund would be calculated, and have tentatively agreed to review the calculation with PG&E.
13. PG&E confirms that they will review the calculation with the Florsheim Brothers.
14. Since AL 2111-G was filed, PG&E has implemented its gas refund plan and has refunded and adjusted \$10,899,918 back to its applicants.
15. If applicants believe their gas refund was not properly adjusted or refunded, then they may address their concerns to PG&E for PG&E to process under the Bankruptcy Court’s Order of March 25, 2002.
16. As stated in Gas Rule 15.A.6, applicants requesting a Distribution Main Extension (including PG&E’s estimated value of the distribution trenching), may be required to execute a written contract.
17. Applicants who do not have an MLX account and believe they should receive a refund may also address their issue to PG&E with a copy of their contract for the period July 1, 1995 through September 17, 1998, for PG&E to address under the Bankruptcy Court’s Order of March 25, 2002.
18. It is reasonable to approve AL 2111-G.

THEREFORE IT IS ORDERED THAT:

1. PG&E's AL 2111-G is approved.
2. The aspects of UDI's protest that state that the AL filing is not an appropriate way to develop a refund plan and that PG&E's computer records were not sufficient to locate all affected applicants are denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 13, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
SUSAN P. KENNEDY
Commissioners

Commissioner Geoffrey F. Brown
being necessarily absent did not participate.